

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LESTER E. PATRICK,)	
)	CIV NO. S-03-2571 GEB JFM PS
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
ANTHONY J. PRINCIPI,)	
Secretary of Department of)	
Veteran Affairs,)	
)	
Defendant.)	
_____)	

On June 7, 2005, Defendant filed a request for an order that would allow one of his witnesses, Ms. Deborah Seal, to testify by video or telephone in the trial of this action, which is scheduled to commence on June 14, 2005. Defendant makes the request under Rule 43(a) of the Federal Rules of Civil Procedure, asserting that the post-operative effects of Ms. Seal's recent surgery show that Ms. Seal cannot travel to California for trial. Defendant has presented evidence showing that Ms. Seal has a post-operative open surgical wound on which a bandage is kept that needs

1 to be changed twice a week at her post-operative medical treatment
2 site on the East Coast.

3 Defendant also states that Plaintiff opposes the request
4 because he desires to have Ms. Seal testify from the witness stand
5 in the courtroom.¹ While it is recognized that the optimal way of
6 examining a witness is to have the witness take the witness stand
7 in the courtroom, in the situation where a witness is unable to
8 attend trial because of a serious medical condition, the witness
9 may be allowed to appear by other means.

10 In light of the nature or Ms. Seal's post-operative
11 condition, Defendant's request that Ms. Seal be allowed to testify
12 by contemporaneous video and audio transmission is granted.
13 Defendant is obligated to make the arrangements required for this
14 testimony.

15 IT IS SO ORDERED.

16 Dated: June 8, 2005

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18 /s/ Garland E. Burrell, Jr.
19 GARLAND E. BURRELL, JR.
20 United States District Judge
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28 ¹ Ms. Seal has been listed as a witness on each party's
witness list.